Claim 11 (Amended Once) The device of Claim 7 wherein each magnet has a magnet strength of between substantially ~~about~~ 500 Gauss.

Claim 12 (Amended Once) The device of Claim 8 wherein said capacity of said sample holder is ~~approximately~~ substantially 20 cc's of liquid.

Claim 13 (Canceled)

Claim 14 (New) Said magnet of Claim 8 being approximately the same height as said cellular material of Claim 1 within said sample holder of Claim 8.

RESPONSE

Applicant further respectfully argues that Examiner's rejections are unfounded on the following grounds:

1. With respect to Examiner's rejection of Claims 2-13 under 35 U.S.C. § 12, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, Applicant desires to respectfully traverse this ground of rejection. A rejection under 35 U.S.C. § 12, ¶ 2, is premised on the idea that, "the specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as the invention." Moreover, a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought. MPEP § 2173.01.

The Examiner's focus during examination of claims for compliance with the requirement for definiteness under 35 U.S.C. § 12, ¶ 2, is to determine whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. MPEP § 2173.02. Further, the definiteness of the claim language must be analyzed in light of the following: (1) the content of the particular application disclosure; (2) the teachings of the prior art; and (3) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. *Id.* A rejection of the claim under 35 U.S.C. § 12, ¶ 2, is only appropriate if a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement. *See Morton Int'l, Inc. v. Cardinal Chem. Co.*, 5, F.3d 1464, 1470, 28 USPQ2d 1190, 1195 (Fed. Cir. 1993).

The Examiner rejected Claims 2-4 under 35 U.S.C. § 12, ¶ 2, as vague and indefinite since the applicant has only claimed an "attachment means for affixing a magnet to each of the arms" and not the magnets. Applicant respectfully requests that Examiner withdraw the rejection because Applicant has amended Claim 1 to include the addition of a magnet after "means for adjusting the position of the first and second arm."

The Examiner rejected Claim 5 under 35 U.S.C. § 12, ¶ 2, as vague and indefinite for the

recitation of the term "flex ion means." Applicant respectfully traverses the rejection and asserts that the term "flexion means" is commonly known to a person of skill in the art as the condition of being flexed or bent. (medical-dictionary.thefreedictionary.com/flexion?p. Exhibit A.) The term "flex ion means" is consistently used by those of skill in the art as the condition of being flexed or bent. (Exhibit B.) Applicant, therefore, respectfully submits that the term "flex ion means," is not vague and ambiguous, but instead, comprises, and respectfully requests that the Examiner withdraws the rejection.

The Examiner rejected Claims 6,7,10 and 11 under 35 U.S.C. § 12, ¶ 2, as vague and indefinite since the applicant has only claimed an "attachment means for affixing a magnet to each of the arms" and not the magnets. Applicant respectfully requests that Examiner withdraw the rejection because Applicant has amended Claim 1 to include the addition of a magnet after "means for adjusting the position of he first and second arm."

With respect to Examiner's rejection of Claim 12 under 35 U.S.C. § 112, ¶ 2, Claim 12 has been amended to read, "The device of Claim 8 wherein said capacity of said sample holder is substantially 20 cc's of liquid." Applicant respectfully asks Examiner to withdraw the rejection because applicant has amended Claim 8 herein to provide antecedent basis for "the sample

holder" and "the capacity."

With respect to Examiner's rejection of Claim 13 under 35 U.S.C. § 112, ¶ 2, Applicant has canceled Claim 13 because Applicant is not claiming a specimen holder.

With respect to Examiner's rejection of Claim 8, under 35 U.S.C. § 112, ¶ 2, Claim 8 has been amended to read, "A sample holder with a capacity and magnet positioning device, comprising; a holder having four walls defining an opening; two walls opposite each other ; the opening being sized to cooperatively fit a glass specimen holder; means for attachment of said magnet of Claim 1 to opposite walls of said sample holder. As a result, Applicant respectfully asks Examiner to withdraw the rejection because "the sample holder walls", "the other" have been omitted from Claim 8 and Claim 1 has been amended herein to provide antecedent basis for magnet.

With respect to Examiner's rejection of Claim 8, under 35 U.S.C. § 112, ¶ 2, Claim 14 has been added to read, "Said magnet of Claim 8 being approximately the same height as said cellular material of Claim 1 within said sample holder of Claim 8." As a result, Applicant respectfully asks Examiner to withdraw the rejection because "the sample", "the same holder" and "two of the sample holder walls, (being opposite the other)" have been omitted from Claim 8.

2. The Examiner's rejected Claims 1-13 under 35 U.S.C. § 102(b), as being anticipated by Wang et al. Applicant respectfully desires to traverse this grounds of claim rejection on the basis that such a grounds of rejection is completely inappropriate primarily due to the fact that a rejection under § 102 (b) requires *strict identity* between the claimed invention and the reference cited.

In the present situation, the Examiner has postulated that that Wang discloses a device for establishing and maintaining a static magnetic null field and that it has "a holder having a first arm an *(sic)* a second arm; means for adjusting the position of the first and second arm". The examiner explains that this is shown in Figures 8 and 9. However, upon review of Figures 8 and 9, it would appear that the "arm portions" of elements 631 and 731 are not in in any form or shape possesed of the quality of being able to be ajusted in positioning, as Claim 1 requires. Applicant has carefully examined all of the drawings in the Wange '470 reference and sees no means or method for adjusting any arms or arm like features containing magnets, and therefore the § 102 (b) grounds of rejection is entirely inappropriate. It would appear that both elements 631 and 731 are described as "yokes" which do not allow the two magnets held therein to be adjusted with respect to the distance between one another. However, to make it clear that the distance between the first and second magnet is adjustable, unlike the Wang 631 and 731 yokes, Applicant has clarified claim 1 to specify this limitation in a better manner.

With respect to Examiner's rejection of Claim 8 under 35 U.S.C. § 102(b), Applicant has now amended Claim 8 to specify that its magnets are on the exterior of the housing, and not on the interior, as shown in Wang '470, figure 7A.

The Examiner has also rejected Claim 8 under 35 U.S.C. § 102(b), as being anticipated by Liberti, et al. because the Liberti reference discloses four walls, two of the four walls being opposite one another and attachment means for attaching a magnet to each of the two opposing walls. In

response to this rejection, Applicant has now amended Claim8 to requre the four walls contain a specimen holder for retaining a quantity of cellular material. The Liberti reference does not disclose the inclusion of a specimen holder for a quantity of cellular material; rather Fig. 4A shows that a ferrous wire 38h is disposed between two magnets; in Fig. 1C a wire 56B is being used; in Fig. 5 a wire 82 is disposed between two magnets 74 and 76; in Fig. 3A a wire 39d is show disposed in housing 21b; in figure 3B a wire 28 is embeded in housing 21c, etc.

In conclusion, based on the long standing legal rules established for determining the validity of 35 U.S.C. § 12, 35 U.S.C. § 102(b) and 35 U.S.C. § 102 (b) rejections, the claims of the present invention are patentable. Applicant submits that the claims of the instant application are now in condition for allowance.

Respectfully Submitted,

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flexion

Also found in: Dictionary/thesaurus, Columbia, Wikipedia

flex·ion (flĕk'shən)
n.

1. The act of bending a joint or limb in the body by the action of flexors.
2. The condition of being flexed or bent.

Mentioned in

Amoss' sign	Brudzinski's sign	clonus	hyperflexion
anaclasis	campylodactyly	cochlear joint	Leri's sign
basal joint reflex	clasp-knife spasticity	deltoid muscle	plantar muscle
baseball finger	claw foot	Frejka pillow splint	posterior tibial muscle
Bechterew-Mendel reflex	clawhand	Hoffmann's sign	More results ▸▸

Exhibit A

flex Also found in: Dictionary/thesaurus, Computing, Acronyms, Columbia, Wikipedia, Hutchinson 0.01 sec.

flex (flĕks)
v.

1. To bend.
2. To contract a muscle.
3. To move a joint so that the parts it connects approach each other.

Mentioned in

abductor muscle of little finger	extension	Lasègue's sign	sling
abductor muscle of little toe	flank position	lithotomy position	talipes equinovalgus
accoucheur's hand	flexion	lumbrical muscle of hand	talipes equinovarus
Barré's sign	hammertoe	paradoxical contraction	tapotement
basal joint reflex	hamstring muscle	Sims' position	**More results** ▸▸

Medical browser

- flecainide acetate
- Flegel's disease
- Fleming
- Flemming
- flesh
- flesh fly
- flesh wound

Full browser

- Flevohof
- Flevoland
- Flevoland
- Flevum
- Flevum
- Flevum
- flew
- flew the flag
- flew the nest
- FLEWEACEN
- Flewed
- flews
- flews
- flews
- FLEWUG
- Flex (Pitch Black EP)
- FLEX (protocol)
- Flex 2
- Flex Alexander
- Flex Center
- Flex circuit
- Flex circuit
- Flex dollar

Exhibit B

Enclosed is:

1. Response and Amendment to the Office Action, mail dated March 24, 2006,
2. Exhibits A and B
3. Automatic Two Month Extension of Time
4. Form 2038 Credit Card Payment Form

Inventor:	Mr. Aaron Bush
Filing Date:	February 14, 2004
Title:	Null Magnetic Field Simulator For Treatment of Medical Conditions
Serial No.:	10/779,354
Examiner:	Mr. David A. Reifsnyder
Group Art Unit No.:	1723

Please date stamp the enclosed Postcard and place in the return mail.

Mail Date: August 24,2006
Due Date August 24, 2004 (2 mo extension)